

# THE LAW PRACTICE OF ARVID J. SWANSON, P.C.

---

27452 482ND AVENUE  
CANTON, SOUTH DAKOTA 57013-5515

605-743-2070  
FAX 605-743-2073  
E-MAIL: AJ@AJSWANSON.COM

June 12, 2019

*Scan to all Persons on PUC E-Service List per Certificate of Service &*  
[kristen.edwards@state.sd.us](mailto:kristen.edwards@state.sd.us)

Kristen N. Edwards, Staff Attorney  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  
Pierre, South Dakota

*Re: File 6215-001. • In re Docket EL19-003, Crowned Ridge Wind LLC  
Codington & Grant Counties*

Dear Counsel:

I represent Timothy & Linda Lindgren of South Shore, South Dakota, as owners of the property legally described in my letter of June 11, 2019. My clients have previously been subject to a certain Memorandum of Leases and Easements, dated June 11, 2014, an instrument that, under Sections 11.4 and 11.6, inhibited the Lindgrens, as Owners, from taking any action adverse to the interests of Operator (this being Boulevard Associates, LLC of Juno Beach, FL). We believe those constraints no longer pertain as of June 11, 2019, but it is now too late to intervene in this Docket EL19-003.

As pointed out in my June 11, 2019 letter, the June 11, 2014 instrument also included Section 5.2, "Effects Easement," with this language:

Owner grants to Operator a non-exclusive easement for audio, visual, view, light, flicker, noise, shadow, vibration, air turbulence, wake, electromagnetic, electrical and radio frequency interference, and any other effects attributable to the Wind Farm or activity located on Owner's Property or on adjacent properties over and across the Owner's Property ("Effects Easement").

Applicant, as a deemed assignee of Operator, no longer has *any* contractual basis upon which to inflict the "effects" of wind turbine presence or operation upon the Lindgrens and their property.

But, Applicant continues to demand of this Commission that it be permitted to dispose of such deleterious dung upon the Lindgren property (and residence) simply because Applicant thinks it is fitting and proper to do so. For example, prior to June 11, 2019, the Lindgren residence was projected to receive about 27 hours annually of shadow flicker. CR-56 and CR-57 are eliminated, of course, but it is our interpretation of the mapping that CR-50, to the northwest on property of another, was the principal source of the shadow flicker "effect."

Under Exhibit A55 (revised June 8, 2019), the two eliminations of the two sites are noted, while CR-50 is described as "moved" - but in what direction and how far can't be determined

(by us). I've not located any updated mapping to show the continued "shadow flicker" effect that CR-50 will now cast upon the Lindgren farm or their residence. I just want to be clear on this point – *no amount of shadow flicker will be acceptable to my clients*, so before Crowned Ridge Wind places and builds CR-50 (or any other turbine, for that matter), it would be best if that "effect" was eliminated. Otherwise, Crowned Ridge Wind acts at its own peril.

Crowned Ridge Wind cannot take, nor will it be permitted to steal, the property rights that it does not otherwise possess by purchase or easement. Neither depth nor breadth of "agreed stipulations" with Commission staff (Exhibit A61) actually improves Applicant's legal standing. Just as Codington County's exercise of zoning power does not include power to confer an "easement" upon Crowned Ridge Wind for the casting of "shadow flicker" for any duration or period of time, this Commission is vested with no legal authority to take land rights from the Lindgren family (as non-participants), and to confer those rights and privileges upon Crowned Ridge Wind. These are rights and privileges that belong to the fee owner *exclusively*, absent a contract to the contrary. Crowned Ridge Wind – as to the Lindgren farm – has no such contract. Those fully occupied in the on-going submission of this case, EL19-003, would do well to remember that essential point.

Very truly yours,  
ARVID J. SWANSON P.C.



A.J. Swanson

- c: All persons listed in the PUC's current Service List for EL19-003, as reflected in the Certificate of Service as is submitted herewith, including counsel for Applicant:

Miles Schumacher, Esq. (via Email Only)  
LYNN JACKSON SHULTZ & LEBRUN, PC  
[mschumacher@lynnjackson.com](mailto:mschumacher@lynnjackson.com)

Timothy & Linda Lindgren

BEFORE THE PUBLIC UTILITIES COMMISSION  
STATE OF SOUTH DAKOTA

*In the Matter of the Application by* )  
CROWNED RIDGE WIND, LLC *for a* ) Docket EL19-003  
*Permit of a Wind Energy Facility in* )  
*Grant and Codington Counties* )

CERTIFICATE OF SERVICE

A true copy of Letter, dated June 12, 2019, addressed to Kristen N. Edwards, Staff Attorney, South Dakota Public Utilities Commission (scan only), two (2) pages in length, having been submitted on behalf of Timothy & Linda Lindgren, and transmitted (the date below) by undersigned, as counsel for said persons upon the following now appearing on the Commission's Service List in this matter:

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)  
(605) 773-3201 - voice

Mr. Eric Paulson  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[eric.paulson@state.sd.us](mailto:eric.paulson@state.sd.us)  
(605) 773-3201- voice

Ms. Kristen Edwards  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[Kristen.edwards@state.sd.us](mailto:Kristen.edwards@state.sd.us)  
(605) 773-3201 - voice

Mr. Miles Schumacher - Representing Crowned  
Ridge Wind, LLC  
Lynn, Jackson, Shultz and Lebrun, PC  
101 N. Minnesota Ave., Ste. 400  
Sioux Falls, SD 57104  
[mschumacher@lynnjackson.com](mailto:mschumacher@lynnjackson.com)  
(605) 332-5999 - voice  
(605) 332-4249 - fax

Ms. Amanda Reiss  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[amanda.reiss@state.sd.us](mailto:amanda.reiss@state.sd.us)  
(605) 773-3201 - voice

Mr. Tyler Wilhelm  
Associate Project Manager  
Crowned Ridge Wind, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408  
[Tyler.Wilhelm@nexteraenergy.com](mailto:Tyler.Wilhelm@nexteraenergy.com)  
(561) 694-3193 – voice

Mr. Darren Kearney  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[darren.kearney@state.sd.us](mailto:darren.kearney@state.sd.us)  
(605) 773-3201 - voice

Mr. Brian J. Murphy  
Senior Attorney  
NextEra Energy Resources, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408  
[Brian.J.Murphy@nee.com](mailto:Brian.J.Murphy@nee.com)  
(561) 694-3814 – voice

Mr. Jon Thurber  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[jon.thurber@state.sd.us](mailto:jon.thurber@state.sd.us)  
(605) 773-3201 - voice

Ms. Cindy Brugman  
Auditor  
Codington County  
14 First Ave. SE  
Watertown, SD 57201  
[cbrugman@codington.org](mailto:cbrugman@codington.org)  
(605) 882-6297 - voice



Mr. Mikal Hanson, Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capital Ave.  
Pierre, SD 57501  
[mikal.hanson@state.sd.us](mailto:mikal.hanson@state.sd.us)  
(605) 773-3201 – voice

Mr. Allen Robish  
47278 161st St.  
Strandburg, SD 57265  
[allen.robish@gmail.com](mailto:allen.robish@gmail.com)  
(605) 949-2648 - voice

Ms. Amber Christenson  
16217 466th Ave.  
Strandburg, SD 57265  
[amber@uniformoutlet.net](mailto:amber@uniformoutlet.net)  
(605) 756-4119 - voice

Ms. Kristi Mogen  
15160 471st Ave.  
Twin Brook, SD 57269  
[silversagehomestead@gmail.com](mailto:silversagehomestead@gmail.com)  
(307) 359-2928 - voice

Ms. Melissa Lynch  
45971 162nd St.  
Watertown, SD 57201  
[melissamarie1010@yahoo.com](mailto:melissamarie1010@yahoo.com)  
(605) 520-2450 - voice

Mr. Patrick Lynch  
45971 162nd St.  
Watertown, SD 57201  
[Patrick.Lynch\\_m@hotmail.com](mailto:Patrick.Lynch_m@hotmail.com)  
(605)265-0326 - voice

Mr. David Ganje - Representing: Mr. Allen Robish,  
Ms. Amber Christenson, Ms. Kristi Mogen, Ms.  
Melissa Lynch and Mr. Patrick Lynch  
Attorney  
Ganje Law Offices  
17220 N. Boswell Blvd., Ste. 130L  
Sun City, AZ 85373  
[davidganje@ganjelaw.com](mailto:davidganje@ganjelaw.com)  
(605) 385-0330 - voice

Ms. Karen Layher, Auditor  
Grant County  
210 E. Fifth Ave.  
Milbank, SD 57252  
[karen.layher@state.sd.us](mailto:karen.layher@state.sd.us)  
(605) 432-6711 - voice

Dated at Canton, South Dakota, this 12th day of June 2019.

Respectfully submitted,



A.J. Swanson  
ARVID J. SWANSON, P.C.  
27452 482<sup>nd</sup> Ave.  
Canton, SD 57013  
605-743-2070  
E-mail: [aj@ajswanson.com](mailto:aj@ajswanson.com)

/s/ A.J. Swanson  
A.J. Swanson  
State Bar of South Dakota # 1680

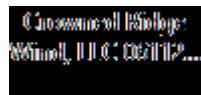
*Attorney for*  
TIMOTHY LINDGREN & LINDA LINDGREN

**From:** Ruby Holborn [REDACTED] >  
**Sent:** Wednesday, June 12, 2019 12:29 AM  
**To:** PUC-PUC <[PUC@state.sd.us](mailto:PUC@state.sd.us)>  
**Subject:** [EXT] EL19-003 Crowned Ridge Wind, LLC

Please place on Docket EL19 - 003 Crowned Ridge Wind, LLC.

Thank You.

George L. Holborn



012509

## Wind Docket EL19-003 Crowned Ridge Wind, LLC in Codington & Grant Counties

I attended the SD PUC Deuel Harvest Wind Energy LLC Evidentiary Hearing for Deuel County April 15-18, 2019 in Fort Pierre. I observed a collegial atmosphere between the Commissioners, their staff, and the applicant's legal team. The applicant's experts and employees were held in higher regard than even the sound expert hired by the PUC. Both the independent and PUC expert claimed a noise impact assessment is best practice. The noise impact assessment could help determine the threshold limit for those forced to live in the sacrifice zone. The independent expert recommended if a noise impact assessment is not conducted, then the threshold for the sacrifice zone should begin at 35dBa; that is if the PUC decides to hold the Health, Safety, and Welfare of the citizens in preeminence above the profits of the wind developer.

Pre-filed testimony by the applicant's experts indicated the nocebo (I see turbines; I think they are harmful; I become ill.) concept was responsible for much of the bad rap given the turbines. Our governor doesn't want turbines near her home.

At Shirley Wind Farm in Brown County WI, the Board of Health declared it a Human Health Hazard. The board ordered the County Health Officer to investigate why people were becoming ill and some were abandoning homes. The applicant's expert witness testified the County Health Officer conducted a peer review of the literature and found "insufficient scientific evidence" between wind turbines and health concerns. May I point out it has been known for more than three years the Brown County WI health officer complained multiple times to her assistant; "the times I have been out there by the wind turbines, I get such migraine headaches". When I read about her review of the literature, it seems biased at best. The board of health may have concluded the county health officer and others may have tried to mislead them.

Can we conclude an applicant's experts or employees could be biased?

But as a taxpayer, I find it troubling the PUC staff was apparently not aware of the "real" facts.

That reminds me: the PUC Commissioners find a whole lot of things troubling, but they have never found a project they could not permit. It does not seem to matter if it is in Bon Homme, Clark, Deuel, Codington or Grant County. At some point they will be permitted. The record indicates sooner than later.

The PUC has heard numerous complaints from people involved with turbines. The victims cannot be believed even though when they left the area they feel better and when they return they become ill.

In Deuel County such victims were called liars.

Does the PUC collectively believe they are all nocebo?

Has the PUC been fooled by the applicant's experts every time?

As the PUC and local county officials permit these wind projects to move forward with larger and larger turbines more and more problems will become apparent. The PUC has been made aware that these problems have existed with larger turbines for more than four decades.

Instead of sounding the alarm to our legislature, they have encouraged the lawmakers to make bad law.

The SD PUC should know the larger the turbines the more potential for people problems.

These facts have been made known a number of times by independent noise experts such as Robert Rand and Richard James. Granted, the wind developer paid experts provide plausible deniability with nocebo, but the SD PUC has received testimony from those who have experienced living among turbines to conclude it is not OK to permit projects based on maximizing profits.

What SD Codified Laws or Administrative Rules permits the PUC authority to place profits before the health, safety, welfare of the inhabitants?

There is something wrong at every level of Government. I just can't put my finger on it.

What are the missing ingredients?

Is it possible the systems political class has decomposed (taking from the taxpayer and ratepayer) to finance future campaigns while at the same time those forced "by government fiat" to live among the turbines are negatively impacted financially?

Plus, they are forced to endure a long list of health miseries.

Officials up and down the political landscape permit (socialism) to put upon the least among us the "old" green new deal. What are the missing ingredients?

Rick Kahler recently penned "A thriving capitalist system requires virtue and integrity."

It has been my observation the lobbyists in Pierre as well as every layer of government have neither.

George L. Holborn

[REDACTED]

Sioux Falls, SD 57110

[REDACTED]

---

**From:** PUC

**Sent:** Wednesday, June 12, 2019 10:04 AM

**To:** [REDACTED]

**Subject:** EL19-003

Mr. and Ms. Holborn,

Thank you for your message and letter relaying your concerns and frustrations about the proposed Crowned Ridge project and the resulting negative affects you believe projects such as this will bring. The commission is required by law to base our decisions on actual evidence presented in the docket process. We cannot make these decisions based on feelings or hearsay or internet searches.

By law, we must take several factors into account when considering whether or not to grant a wind siting permit. The primary duty of the commission is to ensure the location, construction, and operation of the facilities will produce minimal adverse effects to the health, safety, and welfare of the environment and citizens. The standards we must follow are defined in South Dakota Codified Laws and Administrative Rules. Here is a link to state statutes governing the commission, available on the commission's website home page: <http://puc.sd.gov/statutes-administrativelaw/>.

Again, the commission's decisions must be based upon evidence that is presented to the commission by parties of the docket. If commissioners and PUC staff were not to follow these laws, if we were to pick winners and losers based on the feelings of others or of our own, *that* would reflect a lack of virtue and integrity. It would also go against the oath each commissioner took after being elected: to follow the laws of the state of South Dakota. These laws were voted on and enacted by the South Dakota Legislature.

Your message and my response will be posted under Comments and Responses in the EL19-003 docket so my fellow commissioners and others can access them.



Gary Hanson, Chairman  
South Dakota Public Utilities Commission  
[www.puc.sd.gov](http://www.puc.sd.gov)